

McKINLEY & RYAN, LLC

Attorneys at Law

238 West Miner Street
West Chester, PA 19382

Tel: (610) 436-6060

Fax: (610) 436-6804

Lorrie McKinley, Esquire
lmckinley@mckinleyryan.com

Nancy Ryan, Esquire
nryan@mckinleyryan.com

January 18, 2024

The Honorable Jeffrey L. Schmehl
United States District Court for the
Eastern District of Pennsylvania
The Gateway Building, Suite 518
201 Penn Street
Reading, PA 19601

Gardner v. Kutztown University, et al.
C.A. No. 22 cv-1034

Dear Judge Schmehl:

Having received the Court's order today for a status conference this coming Monday in the *Oross* case, we write to request an opportunity during that meeting to discuss an emergent issue in Dr. Gardner's case as well. As you can see from the attached, we provided notice to the University on January 9th that her doctor has released her to return to work for the 2024 spring semester with the alternative accommodation it has repeatedly offered, a converted computer lab equipped to reduce her exposure to Covid-19. Having had over a year to prepare the space for faculty such as Dr. Gardner who might need it to safely work on campus, the University now claims that it had insufficient time to get it ready by the start of the spring semester on January 22nd. Additionally, having forced Dr. Gardner onto unpaid leave, KU did not assign her any classes. As the Court is aware, KU has never in the past indicated that it would take more than two weeks to complete the renovations to the computer lab, and there are other alternatives it could employ to return Dr. Gardner to paid work status even if it were true that it cannot find classes for her to teach. *See* attached at p. 3. Based on my latest conversation with counsel today, the University's plan is to keep her on Leave Without Pay until the 2024 Fall semester which begins nearly nine months from now.

The Court's assistance is needed to help break the logjam that has prevented Dr. Gardner from returning to work, but also to prevent an unnecessary escalation of the litigation. Among other things, now pending before the Court is KU's request for a hearing to dissolve the Preliminary Injunction, which does nothing more than maintain her status as a faculty employee *without pay* and preserve her benefits. The underlying premise for that request is that she is able to return to work in-person, and therefore allowing KU to terminate her employment while her

Letter to the Honorable Jeffrey L. Schmehl

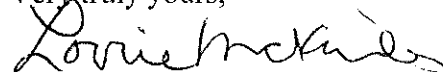
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motion for summary judgment is pending, and before her case can be resolved, would not constitute irreparable harm. This procedural posture is legally precarious for Dr. Gardner and threatens her livelihood, both unnecessary and unjustified, particularly now that she has agreed to return to work on campus and has been denied the right to do so – also without justification.

We look forward to speaking with you on January 22, 2024.

Very truly yours,

A handwritten signature in black ink, appearing to read "Lorrie McKinley", with a stylized flourish at the end.

LORRIE MCKINLEY


cc: Dr. Carolyn Gardner
Kevin R. Bradford, Esquire
Matthew R. Skolnik, Esquire
Ralph Lamar, Esquire

Re: ADA Accommodation

Gardner, Carolyn <gardner@kutztown.edu>

Tue 1/9/2024 4:15 PM

To: Weidman, Jennifer <weidman@kutztown.edu>

 [2023-11-28-JW-Email-F2024-Accommodation-Gardner Carolyn.pdf](#)

Jennifer,

Below is a copy of an email my attorney sent to KU's counsel a few minutes ago.

Sincerely,
Carolyn

Dear Kevin-

I am writing to let you know that based on Dr. Gardner's latest consultation with Dr. Shah, he is willing to release her to return to work for the spring semester with the accommodation originally offered for Spring 2022 (converted computer lab), as revised in Ms. Weidman's most recent articulation of the offer. The only further *proviso* is that the University purchase a high-quality air filter for Dr. Gardner's office.

Please let us know if you need a revised letter from Dr. Shah, or if Dr. Gardner's acceptance of the previous offer for the spring semester is sufficient for purposes of moving forward. Meanwhile, I am going to have Dr. Gardner forward this correspondence to Ms. Weidman. I would appreciate it if you would let me know if there are further steps that we should know about to transfer Dr. Gardner from LWOP status back to payroll.

Lorrie

Lorrie McKinley
Lorrie McKinley, Esquire
McKinley & Ryan, LLC
238 West Miner Street
West Chester, PA 19382
(610) 436-6060
Fax: (610) 436-6804

Carolyn Gardner, Ph.D. | Associate Professor of Management
Department of Business Administration
Kutztown University of Pennsylvania
Old Main 426 | P.O. Box 730 | Kutztown, PA 19530
Phone: 610-683-4587 | Fax: 610-683-1577 | www.kutztown.edu

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DEPARTMENT OF HUMAN RESOURCES

HR Center – 15187 Kutztown Road

PHONE: (610) 683-1353

January 12, 2024

Dr Carolyn Gardner
45 Four Farms Circle
Greensboro, NC 27410

Dear Dr Gardner,

I received your email of 1/9/24. Although the University was glad to hear you will be able to return to the classroom to teach, at this late date, no courses are available for you to teach this semester.

We had reached out to you on 11/28/23 with an alternative accommodation offer for the Fall 2024 semester, asking that you reply by 12/11/23. As you are aware, the course scheduling process has a lengthy timeline. Courses for the imminent Spring 2024 semester were scheduled many months ago to allow faculty to be hired and assigned, rooms to be scheduled, etc. The master schedule for Spring 2024 was released on 10/13/23, advisement began 10/16/23, and spring registration opened 10/25/23. In addition, you have not given us sufficient advance notice to make the necessary modifications to the computer lab for classes starting on 1/22/24.

We look forward to welcoming you back to campus for the Fall 2024 semester. Prior to your return, please provide updated medical documentation showing you've been released to return to the classroom.

Sincerely,

A handwritten signature in black ink, appearing to read "J Weidman".

Jennifer S Weidman
Director of Human Resources

15200 Kutztown Road
P.O. Box 730, Kutztown, PA 19530-0730



www.kutztown.edu
Ph: 610-683-4000 / TDD: 610-683-4499

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Lorrie McKinley

From: Lorrie McKinley
Sent: Friday, January 12, 2024 7:06 PM
To: Kevin Bradford
Cc: Skolnik, Matthew R.; Ralph Lamar
Subject: FW: Notice from HR Denying Dr. Gardner's request to return from LWOP
Attachments: Gardner spring 2024 return response 1.12.24.pdf; 1-13-2022-Weidman email with Deadline.pdf

Hello Kevin-

I know you will not be in on Monday, but please let me know when you will be available to talk about this on Tuesday.

KU has been demanding Dr. Gardner's return to work in-person throughout this dispute, and placed her on LWOP involuntarily rather than provide her a remote work accommodation. Since last December, there have been many communications from HR regarding the proposed alternative accommodation in a converted computer lab, something it has repeatedly represented it would need 1-2 weeks to get ready. For instance, last January, Ms. Weidman asked Dr. Gardner to confirm whether she would accept the accommodation by January 16, 2023, just 11 days before classes were scheduled to begin. KU has never indicated that it would need more time than that to prepare the room. For purposes of the upcoming spring semester, Dr. Gardner provided almost two weeks-notice that she wished to accept the accommodation. If KU needs more time to prepare the room, it can allow her to teach remotely until the room is ready. Dr. Gardner is a tenured faculty member, and she is contractually entitled to return to work. KU can either provide her with a teaching schedule or assign her other appropriate work. Alternatively, it can restore her to payroll without assigning her any work. What it cannot do is force her to remain on LWOP while it allows adjuncts to teach courses she is qualified to teach.

Obviously, Dr. Gardner's return from LWOP will cap her claim for back pay, but that is just one of the many reasons it is in everyone's interests to get this resolved as quickly as possible.

Lorrie
